

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Ella Mintz	Team: Squad #1	CCRB Case #: 201807353	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 08/24/2018 9:40 PM	Location of Incident: 317 West 54th Street	Precinct: 18	18 Mo. SOL 2/24/2020	EO SOL 2/24/2020	
Date/Time CV Reported Sat, 08/25/2018 1:05 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 09/04/2018 11:04 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Jason Brown	30226	950110	MTN PCT
2. POF Katherine Osipowich	26335	961046	MTN PCT
3. LT Richard Khalaf	00000	906567	MTN PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Frank Delia	31618	955852	MTN PCT
2. POF Bernice Pacheco	25234	935448	MTN PCT
3. POM Christopher Olsen	25851	957919	MTN PCT
4. POM Michael Gallagher	06555	961155	MTN PCT
5. POF Dana Harjus	23031	962461	MTN PCT

Officer(s)	Allegation	Investigator Recommendation
A.POF Katherine Osipowich	Force: Police Officer Katherine Osipowich used physical force against § 87(2)(b)	
B.POM Jason Brown	Discourtesy: Police Officer Jason Brown acted discourteously toward § 87(2)(b)	
C.POM Jason Brown	Force: Police Officer Jason Brown used physical force against § 87(2)(b)	
D.POM Jason Brown	Abuse: Police Officer Jason Brown threatened § 87(2)(b) with the use of force.	
E.POM Jason Brown	Discourtesy: Police Officer Jason Brown spoke discourteously to § 87(2)(b)	
F.POF Katherine Osipowich	Abuse: Police Officer Katherine Osipowich threatened to arrest an individual.	
G.LT Richard Khalaf	Abuse: Lieutenant Richard Khalaf threatened to arrest an § 87(2)(b)	
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		

Case Summary

Sergeant George Kalogeropoulos, from Midtown North, reported this incident to IAB on August 25, 2018. The case was received by the CCRB on September 4, 2018 under log #18-33908.

On August 24, 2018 at approximately 9:40PM in front of 317 West 54th Street in Manhattan, a taxi driver approached Police Officer Jason Brown and Police Officer Katherine Osipowich, both assigned to Midtown North, and informed them that § 87(2)(b) had refused to pay her fare and assaulted him. PO Osipowich allegedly dragged § 87(2)(b) from the edge of the sidewalk to closer to the wall of 317 West 54th Street (**Allegation A-Force:** § 87(2)(g)). At the same time, PO Brown pulled § 87(2)(b)'s wig off from her head (**Allegation B-Discourtesy:** § 87(2)(g)). PO Brown allegedly punched § 87(2)(b) in her face (**Allegation C-Force:** § 87(2)(g)). While walking § 87(2)(b) to the Midtown North Precinct stationhouse, PO Brown told § 87(2)(b) "If I have to push you, you're going to be sorry" and "stop the bullshit" (**Allegation D-Abuse of Authority:** § 87(2)(g), **Allegation E- Discourtesy:** § 87(2)(g)). PO Osipowich and Lieutenant Richard Khalaf, also of Midtown North, threatened to arrest an unidentified individual (**Allegations F, G- Abuse of Authority:** § 87(2)(g)). § 87(2)(b) was arrested and charged with § 87(2)(b).

Video capturing this incident was received from the roof of the Midtown North Precinct stationhouse (Board Review 01). The CCRB also received body-worn camera footage from PO Brown, PO Osipowich, Lt. Khalaf and Police Officers, Bernice Pacheco, Christopher Olsen, Dana Harjus, Michael Gallagher, and Frank Delia (Board Reviews 02, 03, 04, 05, 06, 07, 08, 09). In addition, footage was retrieved from the security camera located at 317 West 54th Street; however, this footage is extremely blurry and was therefore not useful in assessing the merits of the allegations (Board Review 10).

Allegation A-Force: Police Officer Katherine Osipowich used physical force against § 87(2)(b)

Allegation B-Discourtesy: Police Officer Jason Brown acted discourteously toward § 87(2)(b)

Allegation C-Force: Police Officer Jason Brown used physical force against § 87(2)(b)

Despite multiple attempts to reach § 87(2)(b) to obtain a statement, the investigation was ultimately unable to establish contact with her (Board Review 11). Captain Luis Barcia, of Midtown North, interviewed § 87(2)(b) and documented her allegations in an Investigating Supervisor's Assessment Report (Board Review 12). According to the ISAR, § 87(2)(b) acknowledged being intoxicated at the time of the incident. § 87(2)(b) alleged that PO Brown pulled her wig off as he dragged her on the ground, causing her to scrape the right side of her face. § 87(2)(b) stated that she kicked PO Brown and that in retaliation, he punched her in the face, causing her lips to swell. § 87(2)(b) also complained of pain to the left side of her chest but she did not specify what caused this pain. § 87(2)(b) was transported to § 87(2)(b) Hospital.

PO Brown took three photos of § 87(2)(b) for the TRI report (Board Review 13). These photos do not show any visible injuries to § 87(2)(b).

At 9:44:09PM in the timestamp of the video obtained from the roof of the Midtown North Precinct stationhouse, § 87(2)(b) who is sitting on the edge of the sidewalk with her feet in the

street, moves her head toward PO Brown, who is standing in front of her (Full video is located in Board Review 01, relevant portion can be found at Board Review 14). PO Osipowich, who is standing behind § 87(2)(b) grabs § 87(2)(b) from under her arms, and pulls her backwards, with § 87(2)(b)'s feet dragging on the ground, until she is no longer in the frame of the video. PO Brown walks toward § 87(2)(b) and pulls § 87(2)(b)'s wig off her head and then tosses it to the ground. PO Brown then walks over to where § 87(2)(b) and PO Osipowich are.

Neither PO Osipowich nor PO Brown had their body-worn cameras activated for this portion of the incident. However, Lt. Khalaf, who arrived at the scene three minutes after these allegations occurred, captured a conversation he had with PO Brown and PO Osipowich regarding what happened. At 21:48:12 in the timestamp of Lt. Khalaf's BWC footage, PO Brown informed Lt. Khalaf that § 87(2)(b) spit at him twice on his pants. PO Brown told Lt. Khalaf that § 87(2)(b) spitting at him "caught me off guard" (Board Review 04).

PO Brown and PO Osipowich provided generally consistent testimony regarding this incident (Board Reviews 15, 16). Both officers stated that when they approached § 87(2)(b) in the backseat of the taxi, they could tell that she was intoxicated due to her smelling like alcohol and her incoherent slurred speech. The officers initially handcuffed § 87(2)(b) and placed her on the curb of the sidewalk because she was stumbling and continued walking towards the street. The officers decided to remove § 87(2)(b) to the hospital because they felt that she could have been struck by a vehicle. While sitting at the curb, § 87(2)(b) became irate, spat on PO Brown, and moved her feet as if she was going to go to the street, which would put her at risk of being hit.

PO Brown stated that he and PO Osipowich walked § 87(2)(b) back to the wall. PO Osipowich stated that she asked § 87(2)(b) multiple times to walk back with them but that she refused to walk so PO Osipowich pulled § 87(2)(b) backward toward the wall. While at the wall, § 87(2)(b) spat at PO Brown again and tried to escape by moving her feet. PO Brown put his knee on § 87(2)(b)'s back to hold her down to prevent her from spitting and from walking away. Both officers denied that PO Brown ever punched § 87(2)(b) in the face. Neither officer heard § 87(2)(b) complain that PO Brown punched her in the face. PO Brown recalled that § 87(2)(b) had a scratch to her face but he did not know how she sustained this injury.

PO Brown and PO Osipowich acknowledged that § 87(2)(b)'s wig came off but both denied that PO Brown pulled it off. PO Osipowich stated that the wig fell while she was pulling § 87(2)(b) back while PO Brown stated that it fell off while he was struggling to get § 87(2)(b) face down at the wall. After watching the aforementioned video during his CCRB interview, PO Brown acknowledged that his hand was on § 87(2)(b)'s wig but denied that he pulled the wig off. When asked what he was trying to do, PO Brown said that he was not sure but that he "wasn't going for her hair." PO Brown stated that the video did not capture what § 87(2)(b) was doing directly before she was pulled back but he "imagined" that she spat on him and that was the reason why PO Osipowich pulled her back. PO Brown said that he was probably putting his hand up in order to deflect § 87(2)(b)'s spit.

Patrol Guide Procedure 221-01 states that any use of force must be reasonable under the circumstances and that in determining whether force is reasonable, members of service should consider the immediacy of the perceived threat of harm to the subject and members of service, as well as whether the subject is attempting to evade arrest by flight (Board Review 17).

§ 87(2)(g)
[REDACTED]

Both PO Brown and PO Osipowich denied that PO Brown punched § 87(2)(b) in the face.

§ 87(2)(g)
[REDACTED]

Patrol Guide Procedure 203-10 requires that officers be courteous and respectful in their interactions with the public (Board Review 18).

§ 87(2)(g)
[REDACTED]

Allegation D-Abuse of Authority: Police Officer Jason Brown threatened § 87(2)(b) with the use of force.

Allegation E-Discourtesy: Police Officer Jason Brown spoke discourteously to § 87(2)(b)

At 21:51:09 in PO Brown's body-worn camera footage, PO Brown informs his fellow officers that he will be arresting § 87(2)(b) (Board Review 02). PO Brown then begins to walk § 87(2)(b) to the stationhouse. At 21:51:21, PO Brown has his hand in the crook of § 87(2)(b)'s left elbow. § 87(2)(b) walks in front of PO Brown. § 87(2)(b) says, "Ow." PO Brown then says, "Walk in. If I have to push you, you're going to be sorry. Walk with me." Due to the angle of the body-worn camera, it is hard to tell what § 87(2)(b) was doing with her body. PO Brown told § 87(2)(b) "Walk with me. You're making it difficult." § 87(2)(b) screams, "Ow!" and PO Brown says, "Stop the bullshit."

PO Brown testified that while he was walking § 87(2)(b) back to the stationhouse, she was being uncooperative by refusing to walk in a straight manner. PO Brown did not recall saying, "If I have to push you, you're going to be sorry" to § 87(2)(b) and did not recall telling her to "stop the bullshit." After watching his BWC footage of the incident, PO Brown stated that § 87(2)(b) was not walking side by side with him and was being "difficult" but he could not elaborate as to

how she was moving her body. PO Brown stated that he made those statements to § 87(2)(b) because she was being uncooperative.

Patrol Guide Procedure 221-01 states that any use of force must be reasonable under the circumstances and that in determining whether force is reasonable, members of service should consider whether the subject is actively resisting custody (Board Review 17).

§ 87(2)(g)

Patrol Guide Procedure 203-10 requires that officers refrain from using discourteous and disrespectful remarks toward civilians (Board Review 18). An officer's use of a single profanity to gain compliance during what was becoming a tense street standoff with an unruly civilian does not constitute misconduct. Disciplinary Case No. 79627/04 (Board Review 19).

§ 87(2)(g)

Allegation F-Abuse of Authority: Police Officer Katherine Osipowich threatened to arrest an individual.

Allegation G-Abuse of Authority: Lieutenant Richard Khalaf threatened to arrest an individual.

At 21:51:13 in the timestamp of Lt. Khalaf's BWC footage, Lt. Khalaf says, "Step aside. Step aside" to a group of civilians who are standing on the sidewalk. A woman in a hot pink jacket and a baseball hat steps in front of Lt. Khalaf and behind PO Osipowich and begins walking. PO Osipowich asks the woman, "Do you want to be next?" Lt. Khalaf admonished the woman for following the officer and told her, "Step back or you're going to go next." PO Osipowich told the woman, "I walked through you to get to my partner just now so now you're obstructing-." Lt. Khalaf told the woman, "You're borderline interfering."

As this woman was not arrested or summonsed, the CCRB had no available means to identify her.

PO Osipowich and Lt. Khalaf both stated that the civilian bystanders were getting too close to the officers and that the civilians were repeatedly told to step back as the sidewalk was very narrow. After watching Lt. Khalaf's BWC footage, both officers stated that the woman in the pink jacket was committing OGA because she was walking closely behind officers and she blocked PO Osipowich's path from getting to PO Brown and § 87(2)(b). Lt. Khalaf stated that following officers is a safety concern because the woman was a stranger and could have had a pre-existing relationship with § 87(2)(b) and because officers cannot see what someone is doing behind them.

A person is guilty of OGA when he or she intentionally obstructs, impairs, or perverts the administration of law or other governmental function by means of intimidation, physical force, or interference. Penal Law 195.05 (Board Review 20)

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party.
- Police Officer Katherine Osipowich has been a member of service for three years and has been a subject in one CCRB complaint and one allegation, which was not substantiated.

§ 87(2)(g)

- Police Officer Jason Brown has been a member of service for seven years and has been a subject in seven CCRB complaints and 14 allegations, of which none were substantiated.

§ 87(2)(g)

- Lieutenant Richard Khalaf has been a member of service for 24 years and has been a subject in 12 CCRB complaints and 22 allegations, of which one was substantiated.
 - 201406717 involved a substantiated allegation of a threat of arrest against Lt. Khalaf. The Board recommended Command Discipline B and the NYPD imposed Command Discipline A and Instructions.

○ § 87(2)(g)

Mediation, Criminal, and Civil Histories

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- This complaint was not suitable for mediation.
- As of January 14, 2019, the New York City Office of the Comptroller has no record of a notice of claim filed in regards to this incident (Board Review 22).
- § 87(2)(b), § 87(2)(c)

Squad No.: _____

Investigator:	_____	_____	_____
	Signature	Print Title & Name	Date
Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date
Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date